

# Convention on Cluster Munitions

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## Fourth Meeting of States Parties

Lusaka, 10–13 September 2013

Item 10 (c) of the provisional agenda

**Consideration of matters pertaining to clearance  
and risk reduction in accordance with Article 4**

### Compliance with Article 4

**Submitted by the President of the Third Meeting of States Parties**

#### Introduction

1. This paper discusses actions States with Article 4 obligations should take in order to comply with the provisions of that article. The paper has a particular emphasis on the provisions contained in Article 4.2(a), the identification of known and suspected contaminated areas through surveys. The primary objective of Article 4 is to remove cluster munition remnants from the ground so as to allow the land to be used safely. To achieve this, contaminated areas must be accurately identified and delineated so as to facilitate effective clearance operations and, later, for a declaration of compliance to be made with confidence. Experience shows that the accurate identification and delineation of cluster munition contaminated areas can be more challenging than the actual clearance operation.

2. As more States progress with their survey and clearance operations, clarification of what constitutes fulfilment of the treaty's Article 4 obligations, will be important. A shared understanding between States parties and relevant national and international implementation stakeholders on what compliance with Article 4 entails, may assist States in their development and implementation of national survey and clearance plans.

3. The recommendations put forward in this paper are intended to provide States parties with strategic and overall guidance on how to approach planning and execution of survey and clearance operations in areas contaminated by cluster munitions. The recommendations are directly linked to the relevant articles and paragraphs of the Convention and do not entail any additional obligations for States parties. Furthermore, the recommendations do not in any way supplant national or international mine action standards, or any operational procedures.

#### Background

4. The Second Meeting of States Parties to the CCM recognised the value of applying the full range of methods for the efficient survey and clearance of cluster munition

remnants. At that meeting, the States parties<sup>1</sup> welcomed a paper that included a set of concrete and operational recommendations for how to address contamination by cluster munition remnants in the most effective and efficient manner.

5. The paper “*Application of all available methods for the efficient implementation of Article 4*”, presented to the 2MSP by Australia as Friend of the President on clearance, outlines seven guiding principles for conducting survey and clearance operations that can make operations more effective and efficient. This paper builds on and further develops the analysis and recommendations in that paper.

## **The Convention’s requirements and other considerations**

6. According to Article 4.1(c), a State shall make a declaration of compliance when it has fulfilled its obligations under Article 4.1(a) and (b) while taking the measures outlined in Article 4.2 and 4.3.

7. The essence of how to fulfill the Convention’s obligations when it comes to survey and clearance is specified in:

Article 2.11 (definition of cluster munition contaminated areas)

Article 4.2(a) (obligation to survey and record cluster munition contaminated areas)

Article 4.2(d) (obligation to clear and destroy all cluster munition remnants in areas under the State’s jurisdiction or control).

Article 4.3 (reference to international standards including the International Mine Action Standards)

8. Consequently, a State with obligations to clear areas contaminated by cluster munition remnants needs to have concluded the following steps in order to make a declaration of compliance:

(a) The State has made every effort to identify all cluster munition contaminated areas (defined in *Article 2.11*), according to Article 4.2(a)

**and**

(b) The State has cleared and destroyed all (*Article 4.2(d)*) cluster munition remnants located in the areas identified through step 1, pursuant to national standards, taking international standards into account (*Article 4.3*).<sup>2</sup>

9. In addition, a shared understanding of what fulfilment of the Article 4 obligations entails should also be based on:

- The practical and operational experiences made by national authorities, humanitarian clearance agencies and relevant United Nations organisations.
- Documented and verifiable results from the application of specific methods to identify cluster munition contaminated areas.
- Relevant national and international mine action standards.

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<sup>1</sup> “...the Meeting warmly welcomed the paper ...and agreed to encourage States parties, as appropriate, to implement the recommendations...” (CCM/MSP/2011/5, section IV, paragraph 22)

<sup>2</sup> Article 4.3 states that States parties shall take international standards, including the International Mine Action Standards, into account, when implementing the activities referred to in Article 4. 2. In this paper, the term national standards imply that international standards are taken into account in the development of those national standards.

## What constitutes “Every effort to identify all cluster munition contaminated areas”?

10. Article 2.11 defines cluster munition contaminated areas as “...an area known or suspected to be contaminated by cluster munition remnants.” **The first question** to be asked is how to identify areas known or suspected to be contaminated by cluster munition remnants.

11. An area *known* to contain cluster munition remnants is one where there is *direct physical evidence* that cluster munition remnants, as defined in Article 2.7, are currently present.

12. An area *suspected* to contain cluster munition remnants is an area where a *strong claim* can be made for the presence of cluster munition remnants. A strong claim must be based on *indirect evidence* which can include *inter alia* reports or statements from local people, information about current and historical land-use, conflict history and available information on use, existing survey data and accident patterns. Multiple items of evidence should be sought to help to determine that there is a strong claim for a specific area to be suspected, and to define that area as narrowly as possible.

13. States parties at 2MSP agreed that the level of evidence for both *known* and *suspected* cluster munition contaminated areas should be defined in national standards, and that these also should specify the required follow-up of both categories of contamination, known and suspected<sup>3</sup>.

14. A related question concerns how to delineate the areas known or suspected to be contaminated. A central concern should be to ensure that areas with known or suspected contamination are defined as narrowly as possible based on adequate evidence. A recurring problem in mine action for two decades has been that contaminated areas have been defined too widely, resulting in ineffective utilization of survey and clearance assets. As indicated above, multiple items of evidence should be sought in order to define a suspected area as narrowly as possible. Whilst urging suspected areas to be defined as narrowly as possible, it should be clear from the paragraphs above that no area should be excluded if a strong claim for the presence of cluster munition remnants remains.

15. **The second question** is what constitutes *every effort*, as required under Article 4.2(a). The term constitutes a strong obligation to do whatever is necessary in order to fulfill the obligation. It implies an obligation to actively gather evidence regarding the pattern of possible contamination nationally and to consider and evaluate all available sources of information, including indirect evidence.

16. Even if a State party has made every effort to identify all cluster munition contaminated areas, situations might occur where previously unknown contaminated areas are discovered. If a state has declared compliance in accordance with Article 4.1(c), following the steps described above, and subsequently discovers evidence of previously unknown contamination, it then needs to take the actions agreed by States parties to address such situations. Such actions could include for instance, the steps described in the draft voluntary template for a declaration of compliance, referred to below.

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<sup>3</sup> CCM/MSP/2011/WP.4, paragraph 9 referred to on page 1 in this paper, describes a series of relevant actions for this.

## Declaration of compliance

17. When a State has completed steps 1 and 2, and thus has fulfilled its obligations under Article 4, it has an obligation to make a declaration of compliance to the next Meeting of States Parties (*Article 4.1(c)*). The Convention does not offer a description of what is required in such a declaration, but based on the above, and building on the experience gained from the voluntary template for a declaration of compliance under the Mine Ban Convention, it is possible to suggest a draft voluntary template suitable for the CCM. Such a draft is attached in an annex to this paper.

18. In the event that a State experiences new cluster munition contamination after the declaration of compliance is submitted, Article 4.1(b) requires completion of clearance and destruction of these areas “as soon as possible but not later than ten years after the end of the active hostilities” that caused the contamination. At that point a further declaration of compliance should be made to the next Meeting of States Parties (*Article 4.1(c)*)

## Recommendations

19. To comply with Article 4, a State party with cluster munition contaminated areas under its jurisdiction or control, must, as a minimum, undertake systematic actions (surveys), following national standards, to identify and, as precisely as possible, geo-locate, delineate and record these areas.

20. Where cluster munition remnants are found, national standards must define methods and approaches to accurately determine the perimeters of the contaminated area, i.e. where to stop the search.

21. Suspected contamination from cluster munitions should normally be recorded as a single point (evidence point or similar) unless the boundaries of the suspected contaminated area can be accurately identified and recorded at the same time. As a general rule identified contaminated areas should be recorded as precisely as possible with perimeters determined by the distance to nearest evidence points, as defined in national standards, with the option of expanding the area when new evidence points are found.

22. The level of evidence required to create an evidence point should be defined in the national standards. The national standards should also reflect the need to accurately delineate known or suspected contaminated areas, based on the best available evidence, and facilitate an operational approach that favors adding new areas when evidence is found, rather than one that favors the recording of large areas that then are cancelled and reduced because no evidence of contamination exist.

23. All surveys should, to the degree possible, differentiate between categories of the explosive contamination, distinguishing between cluster munition contaminated areas, mined areas and general UXO contaminated areas, as well as any mixture of the categories.

24. All relevant data from such surveys should as a minimum be recorded and entered into a national database that is accessible to relevant stakeholders. There should be reliable and credible evidence for including points in the database in order to ensure the integrity of the information in the database. The data should segregate between areas that need to be surveyed further and areas where technical survey and eventual clearance procedures must be conducted in order to release them. Procedures should be in place to ensure that data is systematically maintained and updated. The database should be used as the main vehicle for prioritizing tasks, allocating resources and as basis for national strategies.

25. States parties should at the Fourth Meeting of States Parties adopt the draft voluntary template for a Declaration of Compliance with Article 4 of the Convention on Cluster Munitions as annexed to this Working Paper.

26. States parties should at the Fourth Meeting of States Parties welcome this Working Paper as guiding principles for States parties in the process of implementing and complying with Article 4 of the Convention on Cluster Munitions.

## Annex

### **Draft voluntary template Declaration of compliance with Article 4 of the Convention, in accordance with Article 4.1(c)**

1. A declaration of compliance should, as a minimum, contain the following:
  - (a) The formal declaration that the State has fulfilled its obligations under Article 4.1 (a) or 4.1 (b) together with a description of what actions the State has taken to fulfill these obligations and of where the archived documentation of these actions can be found in the future. As a guidance, this section of the declaration should include the following:
    - (i) A declaration that the State has made every effort to identify all cluster munition contaminated areas under its jurisdiction or control.
    - (ii) A declaration that the State has cleared and destroyed or ensured the destruction of all cluster munition remnants in these areas, in accordance with Article 4 of the Convention. A declaration on what date the State has fulfilled this obligation.
    - (iii) A description of the methods that have been used to identify and release these areas, and of the areas that have been surveyed and cleared.
    - (iv) Information on where the archived documentation of these actions (including relevant databases) will be located, how it will be maintained and how to get in contact with the institution responsible for the archive.
    - (v) If possible, the declaration should be supplemented with maps and geo-referenced data.

#### **And**

- (b) A description of what actions the State will take if previously unknown cluster munition contaminated areas are identified after completion:
    - (i) A declaration that in the event that previously unknown areas contaminated by cluster munitions are discovered after this date, the State will, as soon as possible.
    - (ii) Accurately identify the extent of the contaminated areas and destroy or ensure the destruction of all cluster munition remnants in these contaminated areas and ensure the effective exclusion of civilians in accordance with Article 4.
    - (iii) Make its needs for assistance known to other States parties, as appropriate.
    - (iv) Report such contaminated areas in accordance with its obligations under Article 7 and share such information through any other formal and informal means.
    - (v) When these contaminated areas have been identified, and all cluster munition remnants in these areas have been cleared and destroyed, make an additional Declaration of Compliance.
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